



**Republic v County Secretary, County Government of Meru & 4 others; Joseph Mwirigi Kabura t/a Mwirigi Kabura & Co. Advocates (Exparte Applicant) (Environment and Land Case Judicial Review Application E013 of 2024) [2025] KEELC 3804 (KLR) (13 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3804 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E013 OF 2024**

**BM EBOSO, J  
MAY 13, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU .... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE, ECONOMIC  
PLANNING & ICT ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER, FINANCE AND ECONOMIC PLANNING, COUNTY  
GOVERNMENT OF MERU ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, LEGAL AFFAIRS, PUBLIC  
SERVICE MANAGEMENT & ADMINISTRATION ..... 4<sup>TH</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MERU ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**JOSEPH MWIRIGI KABURA T/A MWIRIGI KABURA & CO.  
ADVOCATES ..... EXPARTE APPLICANT**

**JUDGMENT**

1. The ex-parte applicant represented the County Government of Meru in Meru CMCC Civil Case Number 421 of 2014, involving an ownership dispute over land parcel number over Meru Municipality Plot No. 17664. Subsequent to that, the ex-parte applicant filed an advocate-client bill of costs, to wit, Meru ELC Miscellaneous Application No E019 of 2023 and invited the taxation officer



of this court to tax the bill. The bill was, on 23/5/2024, taxed by the taxing Officer of this court [Hon E Ndegwa] at Kshs. 939,600. The taxing officer issued a certificate of costs dated 10/7/2024.

2. Subsequent to that, the ex-parte applicant brought a motion dated 31/7/2024 in the said cause, inviting the court to enter judgment in their favour in terms of the certificate of costs. The court [Nzili J] heard the application and disposed it through a judgment dated 16/10/2024. The court [Nzili J] decreed the County Government to pay to the ex-parte applicant the taxed sum of Kshs. 939,600 together with interest at the rate of 14% per annum with effect from 31/7/2024.
3. Thereafter, the ex-parte brought a chamber summons application dated 17/12/2024, seeking leave to apply for an order of mandamus compelling the respondents to implement the judgment and order issued in Meru ELC Misc. Application No. E019 of 2023 by paying the decretal sum to the ex-parte applicant. Vide an order made on 18/12/2024, the court [Yano J] granted the ex-parte applicant the leave sought. Consequently, the ex-parte applicant brought a notice of motion dated 19/12/2024, seeking an order of mandamus compelling the respondents to pay the decretal sum. The said application is the subject of this judgment.

### **Ex-parte Applicant's Case**

4. The application dated 19/12/2024 is premised on the grounds outlined in the statutory statement of facts and the verifying affidavit dated 17/12/2024. It was canvassed through written submissions dated 7/2/2024, filed by Mwirigi Kaburu & Co. Advocates. The case of the applicant is that they filed an advocate-client bill of costs dated 31/10/2023 against the 5<sup>th</sup> respondent. They contend that upon being served with the said bill of costs, the 5<sup>th</sup> respondent filed an objection to the said bill of costs. The applicants further contend that a ruling by the taxing officer was delivered on 23/5/2024, and the bill was taxed at Kshs.939,600, adding that a certificate of costs was thereafter issued on 10/7/2024.
5. The applicant contends that the 5<sup>th</sup> respondent did not file any reference against the ruling dated 23/5/2024. They contend that they applied for entry of judgment on 31/7/2024 in Misc. Appl No. E019 of 2023, which application was allowed on 16/10/2024. The applicant further contends that they applied for a certificate of order against the County Government, and the same was issued on 6/11/2024 and was served upon the 5<sup>th</sup> respondent on 8/11/2024. They add that the 5<sup>th</sup> respondent has not made any payment despite the demand made in their letter dated 6/11/2024.
6. The applicant states that the respondents have a duty to obey and implement the orders of the court issued against them. They urge the court to issue the order of mandamus to compel the respondents to pay the decreed sum.

### **Respondents' Case**

7. The respondents opposed the application through a notice of preliminary objection dated 28/1/2025, replying affidavit and written submissions dated 20/3/2025 filed through the Office of the County Attorney. The case of the respondents is that this court is a specialized court under Article 162(2) (b) of the *Constitution* of Kenya 2010, with its jurisdiction set out under Section 13 of the *Environment and Land Court Act*. They contend that the court lacks the requisite jurisdiction to hear and determine the present application. The respondents argue that this court is not the forum to resolve disputes emanating from a certificate of taxation. They add that this court has no jurisdiction to grant the prayers sought in the motion, wherein the only issue pertains to payment of money rather than a dispute relating to environment or land.
8. The respondents argue that the orders sought in the application are incapable of being granted against the cited respondents in the manner drafted. They state that the application is incompetent



for misjoinder of parties for whom the orders for citation for contempt of court were sought. The respondents add that the application offends the mandatory legal prerequisites to support an application for citation of the respondents for contempt of court.

### **Analysis and Determination**

9. The court has considered the motion, the response to the motion, and the parties' respective submissions. The court has also considered the relevant legal frameworks and the jurisprudence applicable to the issues that emerge for determination. The following are the two key issues that fall for determination in the judicial review motion: (i) Whether this court [the ELC] has jurisdiction to entertain the judicial review motion; and (ii) Whether the application meets the criteria for grant of an order of mandamus. I will be brief in my analysis and disposal of the two issues.

10. The broad jurisdiction of this Court is spelt out by Article 162 (2) (b) which provides as follow:

- “ 162 Parliament shall establish courts with the status of the High Court to hear and  
(2) determine disputes relating to—  
(a) .....  
(b) the environment and the use and occupation of, and title to, land”

11. Pursuant to Article 162 (2) of the Constitution, Parliament enacted the Environment and Land Court Act, establishing this court. Parliament elaborated, in details, the jurisdiction of the Court at Section 13 of the Act which provides as follows:

- “ 13. Jurisdiction of the Court  
(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.  
(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—  
a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;  
b. relating to compulsory acquisition of land;  
c. relating to land administration and management;  
d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and  
e. any other dispute relating to environment and land.  
(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or



infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by Act No. 12 of 2012, Sch.
- (6) Deleted by Act No. 12 of 2012, Sch.
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
  - a. interim or permanent preservation orders including injunctions;
  - b. prerogative orders;
  - c. award of damages;
  - d. compensation;
  - e. specific performance;
  - f. restitution;
  - g. declaration; or
  - h. costs.

12. It is clear from the above framework that this court has general jurisdiction to grant prerogative/judicial review orders in exercise of its jurisdiction under the Act. Indeed, there abound pronouncements by superior courts of this Country to the effect that in exercise of their respective jurisdictions, the two courts created under Article 162 (2) have jurisdiction to grant reliefs incidental to the jurisdiction conferred upon them by the Constitution. (see Daniel N Mugendi v Kenyatta University & 3 others [2013] eKLR)
13. The judicial review motion under consideration is an application inviting this court to enforce its judgment; its decree; its certificate of costs; and its certificate of order. The certificate of costs that culminated in the judicial review motion was issued by the taxing officer of this court. The certificate of costs was adopted as a judgment of this court vide a formal judgment rendered by this court [Nzili J] on 16/10/2024. It is the judgment dated 16/10/2024 and the consequential decree that the ex-parte applicant has invited this court to enforce. Secondly, the certificate of order which the ex-parte applicant has invited this court to enforce was issued by this court.
14. Under Section 14 of the Environment and Land Court Act as read together with the Civil Procedure Act and the Civil Procedure Rules, this Court is vested with jurisdiction to enforce its judgments, awards, orders and decrees. The contention that the court does not have jurisdiction to enforce its judgment, decree and certificate of order is, in my view, erroneous.



15. Consequently, it is the finding of this court that it has jurisdiction to entertain the notice of motion dated 19/12/2024 which seeks enforcement of the certificate of costs, the consequential judgment, the consequential decree and the consequential certificate of order, all issued by this court.
16. Does the motion meet the criteria for grant of an order of mandamus. The test for grant of an order of mandamus was outlined in the Canadian case of *Apotex Inc v Canada (Attorney General)* and was also discussed in *Dragan v Canada (Minister of Citizenship and Immigration)*. The key elements that must be present for the writ to issue are:
  - a. there must be a public legal duty to act;
  - b. the duty must be owed to the applicant;
  - c. there must be a clear right to the performance of that duty, meaning that:
    - i. the applicant must have satisfied all conditions precedent; and
    - ii. there must have been: a prior demand for performance; a reasonable time to comply with the demand, unless there was outright refusal; and an express refusal, or an implied refusal through unreasonable delay;
      - a. there should be no other adequate remedy available to the applicant;
      - b. the order sought must be of some practical value or effect;
      - c. there should be no equitable bar to the relief sought.
17. Has the ex-parte applicant met the above threshold? Among other evidence, the ex-parte applicant exhibited the following documents: (i) certificate of costs issued by the taxing officer of this court; (ii) judgment by Nzili J; (iii) certificate of order dated 6/11/2024; and (iv) demand letter dated 6/11/2024 addressed to the County Secretary of the County Government of Meru and duly served on 8/11/2024. The respondents did not present any evidence of a valid order staying enforcement of the judgment of this court.
18. In their submissions, the respondents contended that they are regulated by the framework in the *Public Finance Management Act* 2012 which enjoins all County Government expenditures to be pre-approved and budgeted for by the County Assembly. The aspect of budgeting is a factor to take into account when framing the order of mandamus. It does not, however, insulate public officials from the requirement to act responsibly by settling liabilities of Government Departments which they head.
19. Taking the foregoing into account, this court finds that the criteria for grant of an order of mandamus has been met. However, taking into account the fact that the certificate of order was issued in November, 2024 in the middle of the financial year, the order of mandamus will take effect after the first quarter of the new financial year, to wit, from 1/10/2025. This is to allow the respondents sufficient time to factor monies in the county Government Budget and satisfy the decree.
20. Taking into account the fact that whereas the bill of costs was taxed on 23/5/2024, the certificate of order was not served until 6/11/2024, parties will bear their respective costs of the judicial review application.
21. In the end, the notice of motion dated 19/12/2024 is allowed in the following terms:
  - a. An order of mandamus is hereby issued compelling the respondents to implement the judgment, decree and certificate of order issued in Meru ELC Land Misc. Application No. E019 of 2013 by paying to the ex-parte applicant the sum of Kshs. 939,600 being the decretal



sum and by further paying to the ex-parte applicant the accrued interest at the rate of 14% per annum reckoned from 31/7/2024 until payment in full.

- b. The order of mandamus shall take effect from 1/10/2025.
- c. Parties shall bear their respective costs of this suit

**DATED, SIGNED AND DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF MAY 2025**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of

Mr. Kaburu – the Ex-parte Applicant

Mr. Tupet – Court Assistant

